

OSHA Enforcement Guidance for Recording Cases of COVID-19 Goes Into Effect Today, May 26, 2020

May 26, 2020

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Porzio Client Alert

The new guidance memorandum from the U.S. Department of Labor's Occupational Health & Safety Administration (OSHA) regarding employers' obligations to record confirmed cases of COVID-19 goes into effect today and rescinds OSHA's prior guidance on this topic.

COVID-19 is considered a recordable illness under OSHA regulations and employers must record confirmed cases if the following criteria are met:

1. The case is a confirmed case of COVID-19, as defined by the Centers for Disease Control and Prevention (CDC);
2. The case is work-related as defined by 29 CFR § 1904.5; and
3. The case involves one or more of the general recording criteria set forth in 29 CFR § 1904.7.

According to the memorandum, OSHA will exercise enforcement discretion in determining whether an employer has complied with its reporting obligations, taking into consideration the "reasonableness of the employer's investigation into work-relatedness," and evidence available to the employer, including evidence that a COVID-19 illness was contracted at work. While the Administration does not expect employers to conduct intrusive investigations into confirmed cases, at a minimum, employers should: (1) ask an infected employee how he or she believes the infection was contracted, (2) inquire about work and non-work activities that may have exposed the employee to infection, and (3) review the employee's work environment.

Although OSHA acknowledges that attributing COVID-19 infection to the workplace may be a difficult task, evidence indicating an infection was "work-related" following a review of the work environment may include: several positive cases in the workplace develop among employees who work in close proximity to each other; a newly infected employee works in close proximity to a co-worker with a recent confirmed infection; or an infected employee works frequently and in close proximity to the general public in a geographical area where rates of COVID-19 infection are prevalent.

Conversely, if, after an employers' reasonable and good faith inquiry -- and none of the foregoing circumstances are present -- the employer cannot determine with any certainty whether the employee contracted COVID-19 in the workplace, then the employer is under no obligation to report the event.

The new guidance will remain in effect until further notice. The OSHA memorandum is available [here](#):

Please do not hesitate to contact us with any questions you may have regarding OSHA compliance or to discuss your specific circumstances or the impact of COVID-19 on your business.